
SUBSTITUTE SENATE BILL 5964

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline and Hargrove)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to persistent offenders; reenacting and amending
2 RCW 9.94A.030; creating a new section; and providing an expiration
3 date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The task force on sentencing of
6 persistent offenders is hereby created for the purpose of conducting a
7 review of the crimes considered a most serious offense. The objectives
8 of the task force are to:

9 (a) Examine existing evidence concerning the types of offenses
10 committed by individuals convicted only of the crimes of assault in the
11 second degree and robbery in the second degree and sentenced to life in
12 prison as a persistent offender;

13 (b) Evaluate whether the inclusion of assault in the second degree
14 and robbery in the second degree as crimes classified as most serious
15 offenses has resulted in disproportionate sentencing of individuals;
16 and

17 (c) Assess the objectives of the three-strikes law and evaluate
18 whether the crimes of assault in the second degree and robbery in the

1 second degree should continue to be classified as most serious
2 offenses.

3 (2) The task force shall be composed of:

4 (a) One member of each of the two largest caucuses of the senate,
5 appointed by the president of the senate;

6 (b) One member of each of the two largest caucuses of the house of
7 representatives, appointed by the speaker of the house of
8 representatives;

9 (c) One police chief appointed by the Washington association of
10 sheriffs and police chiefs;

11 (d) One representative of the Washington association of criminal
12 defense lawyers;

13 (e) One representative of the Washington association of prosecuting
14 attorneys; and

15 (f) One representative of the Washington coalition of crime victim
16 advocates.

17 (3) Legislative members of the task force shall be reimbursed for
18 travel expenses in accordance with RCW 44.04.120. Nonlegislative
19 members, except those representing an employer or organization, are
20 entitled to be reimbursed for travel expenses in accordance with RCW
21 43.03.050 and 43.03.060.

22 (4) The task force shall make a report, together with any
23 recommendations, to the legislature not later than December 31, 2007.

24 **Sec. 2.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
25 122 s 7, and 2006 c 73 s 5 are each reenacted and amended to read as
26 follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Board" means the indeterminate sentence review board created
30 under chapter 9.95 RCW.

31 (2) "Collect," or any derivative thereof, "collect and remit," or
32 "collect and deliver," when used with reference to the department,
33 means that the department, either directly or through a collection
34 agreement authorized by RCW 9.94A.760, is responsible for monitoring
35 and enforcing the offender's sentence with regard to the legal
36 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

3 (3) "Commission" means the sentencing guidelines commission.

4 (4) "Community corrections officer" means an employee of the
5 department who is responsible for carrying out specific duties in
6 supervision of sentenced offenders and monitoring of sentence
7 conditions.

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed
10 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
11 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
12 community subject to controls placed on the offender's movement and
13 activities by the department. For offenders placed on community
14 custody for crimes committed on or after July 1, 2000, the department
15 shall assess the offender's risk of reoffense and may establish and
16 modify conditions of community custody, in addition to those imposed by
17 the court, based upon the risk to community safety.

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

22 (7) "Community placement" means that period during which the
23 offender is subject to the conditions of community custody and/or
24 postrelease supervision, which begins either upon completion of the
25 term of confinement (postrelease supervision) or at such time as the
26 offender is transferred to community custody in lieu of earned release.
27 Community placement may consist of entirely community custody, entirely
28 postrelease supervision, or a combination of the two.

29 (8) "Community protection zone" means the area within eight hundred
30 eighty feet of the facilities and grounds of a public or private
31 school.

32 (9) "Community restitution" means compulsory service, without
33 compensation, performed for the benefit of the community by the
34 offender.

35 (10) "Community supervision" means a period of time during which a
36 convicted offender is subject to crime-related prohibitions and other
37 sentence conditions imposed by a court pursuant to this chapter or RCW
38 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the
2 conditions of supervision may, subject to available resources, include
3 treatment. For purposes of the interstate compact for out-of-state
4 supervision of parolees and probationers, RCW 9.95.270, community
5 supervision is the functional equivalent of probation and should be
6 considered the same as probation by other states.

7 (11) "Confinement" means total or partial confinement.

8 (12) "Conviction" means an adjudication of guilt pursuant to Titles
9 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
10 acceptance of a plea of guilty.

11 (13) "Crime-related prohibition" means an order of a court
12 prohibiting conduct that directly relates to the circumstances of the
13 crime for which the offender has been convicted, and shall not be
14 construed to mean orders directing an offender affirmatively to
15 participate in rehabilitative programs or to otherwise perform
16 affirmative conduct. However, affirmative acts necessary to monitor
17 compliance with the order of a court may be required by the department.

18 (14) "Criminal history" means the list of a defendant's prior
19 convictions and juvenile adjudications, whether in this state, in
20 federal court, or elsewhere.

21 (a) The history shall include, where known, for each conviction (i)
22 whether the defendant has been placed on probation and the length and
23 terms thereof; and (ii) whether the defendant has been incarcerated and
24 the length of incarceration.

25 (b) A conviction may be removed from a defendant's criminal history
26 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
27 a similar out-of-state statute, or if the conviction has been vacated
28 pursuant to a governor's pardon.

29 (c) The determination of a defendant's criminal history is distinct
30 from the determination of an offender score. A prior conviction that
31 was not included in an offender score calculated pursuant to a former
32 version of the sentencing reform act remains part of the defendant's
33 criminal history.

34 (15) "Day fine" means a fine imposed by the sentencing court that
35 equals the difference between the offender's net daily income and the
36 reasonable obligations that the offender has for the support of the
37 offender and any dependents.

1 (16) "Day reporting" means a program of enhanced supervision
2 designed to monitor the offender's daily activities and compliance with
3 sentence conditions, and in which the offender is required to report
4 daily to a specific location designated by the department or the
5 sentencing court.

6 (17) "Department" means the department of corrections.

7 (18) "Determinate sentence" means a sentence that states with
8 exactitude the number of actual years, months, or days of total
9 confinement, of partial confinement, of community supervision, the
10 number of actual hours or days of community restitution work, or
11 dollars or terms of a legal financial obligation. The fact that an
12 offender through earned release can reduce the actual period of
13 confinement shall not affect the classification of the sentence as a
14 determinate sentence.

15 (19) "Disposable earnings" means that part of the earnings of an
16 offender remaining after the deduction from those earnings of any
17 amount required by law to be withheld. For the purposes of this
18 definition, "earnings" means compensation paid or payable for personal
19 services, whether denominated as wages, salary, commission, bonuses, or
20 otherwise, and, notwithstanding any other provision of law making the
21 payments exempt from garnishment, attachment, or other process to
22 satisfy a court-ordered legal financial obligation, specifically
23 includes periodic payments pursuant to pension or retirement programs,
24 or insurance policies of any type, but does not include payments made
25 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
26 or Title 74 RCW.

27 (20) "Drug offender sentencing alternative" is a sentencing option
28 available to persons convicted of a felony offense other than a violent
29 offense or a sex offense and who are eligible for the option under RCW
30 9.94A.660.

31 (21) "Drug offense" means:

32 (a) Any felony violation of chapter 69.50 RCW except possession of
33 a controlled substance (RCW 69.50.4013) or forged prescription for a
34 controlled substance (RCW 69.50.403);

35 (b) Any offense defined as a felony under federal law that relates
36 to the possession, manufacture, distribution, or transportation of a
37 controlled substance; or

1 (c) Any out-of-state conviction for an offense that under the laws
2 of this state would be a felony classified as a drug offense under (a)
3 of this subsection.

4 (22) "Earned release" means earned release from confinement as
5 provided in RCW 9.94A.728.

6 (23) "Escape" means:

7 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
8 first degree (RCW 9A.76.110), escape in the second degree (RCW
9 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
10 willful failure to return from work release (RCW 72.65.070), or willful
11 failure to be available for supervision by the department while in
12 community custody (RCW 72.09.310); or

13 (b) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as an escape
15 under (a) of this subsection.

16 (24) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
19 run injury-accident (RCW 46.52.020(4)), felony driving while under the
20 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
21 felony physical control of a vehicle while under the influence of
22 intoxicating liquor or any drug (RCW 46.61.504(6)); or

23 (b) Any federal or out-of-state conviction for an offense that
24 under the laws of this state would be a felony classified as a felony
25 traffic offense under (a) of this subsection.

26 (25) "Fine" means a specific sum of money ordered by the sentencing
27 court to be paid by the offender to the court over a specific period of
28 time.

29 (26) "First-time offender" means any person who has no prior
30 convictions for a felony and is eligible for the first-time offender
31 waiver under RCW 9.94A.650.

32 (27) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance.

35 (28) "Legal financial obligation" means a sum of money that is
36 ordered by a superior court of the state of Washington for legal
37 financial obligations which may include restitution to the victim,
38 statutorily imposed crime victims' compensation fees as assessed

1 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
2 court-appointed attorneys' fees, and costs of defense, fines, and any
3 other financial obligation that is assessed to the offender as a result
4 of a felony conviction. Upon conviction for vehicular assault while
5 under the influence of intoxicating liquor or any drug, RCW
6 46.61.522(1)(b), or vehicular homicide while under the influence of
7 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
8 obligations may also include payment to a public agency of the expense
9 of an emergency response to the incident resulting in the conviction,
10 subject to RCW 38.52.430.

11 (29) "Most serious offense" means any of the following felonies or
12 a felony attempt to commit any of the following felonies:

13 (a) Any felony defined under any law as a class A felony or
14 criminal solicitation of or criminal conspiracy to commit a class A
15 felony;

16 (b) Assault in the second degree;

17 (c) Assault of a child in the second degree;

18 (d) Child molestation in the second degree;

19 (e) Controlled substance homicide;

20 (f) Extortion in the first degree;

21 (g) Incest when committed against a child under age fourteen;

22 (h) Indecent liberties;

23 (i) Kidnapping in the second degree;

24 (j) Leading organized crime;

25 (k) Manslaughter in the first degree;

26 (l) Manslaughter in the second degree;

27 (m) Promoting prostitution in the first degree;

28 (n) Rape in the third degree;

29 (o) Robbery in the second degree;

30 (p) Sexual exploitation;

31 (q) Vehicular assault, when caused by the operation or driving of
32 a vehicle by a person while under the influence of intoxicating liquor
33 or any drug or by the operation or driving of a vehicle in a reckless
34 manner;

35 (r) Vehicular homicide, when proximately caused by the driving of
36 any vehicle by any person while under the influence of intoxicating
37 liquor or any drug as defined by RCW 46.61.502, or by the operation of
38 any vehicle in a reckless manner;

1 (s) Any other class B felony offense with a finding of sexual
2 motivation;

3 (t) Any other felony with a deadly weapon verdict under RCW
4 9.94A.602;

5 (u) Any felony offense in effect at any time prior to December 2,
6 1993, that is comparable to a most serious offense under this
7 subsection, or any federal or out-of-state conviction for an offense
8 that under the laws of this state would be a felony classified as a
9 most serious offense under this subsection;

10 (v)(i) A prior conviction for indecent liberties under RCW
11 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
12 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
13 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
14 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

15 (ii) A prior conviction for indecent liberties under RCW
16 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
17 if: (A) The crime was committed against a child under the age of
18 fourteen; or (B) the relationship between the victim and perpetrator is
19 included in the definition of indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
21 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
22 through July 27, 1997;

23 (w) Any out-of-state conviction for a felony offense with a finding
24 of sexual motivation if the minimum sentence imposed was ten years or
25 more.

26 (30) "Nonviolent offense" means an offense which is not a violent
27 offense.

28 (31) "Offender" means a person who has committed a felony
29 established by state law and is eighteen years of age or older or is
30 less than eighteen years of age but whose case is under superior court
31 jurisdiction under RCW 13.04.030 or has been transferred by the
32 appropriate juvenile court to a criminal court pursuant to RCW
33 13.40.110. Throughout this chapter, the terms "offender" and
34 "defendant" are used interchangeably.

35 (32) "Partial confinement" means confinement for no more than one
36 year in a facility or institution operated or utilized under contract
37 by the state or any other unit of government, or, if home detention or
38 work crew has been ordered by the court, in an approved residence, for

1 a substantial portion of each day with the balance of the day spent in
2 the community. Partial confinement includes work release, home
3 detention, work crew, and a combination of work crew and home
4 detention.

5 (33) "Persistent offender" is an offender who:

6 (a)(i) Has been convicted in this state of any felony considered a
7 most serious offense; and

8 (ii) Has, before the commission of the offense under (a) of this
9 subsection, been convicted as an offender on at least two separate
10 occasions, whether in this state or elsewhere, of felonies that under
11 the laws of this state would be considered most serious offenses and
12 would be included in the offender score under RCW 9.94A.525; provided
13 that of the two or more previous convictions, at least one conviction
14 must have occurred before the commission of any of the other most
15 serious offenses for which the offender was previously convicted; or

16 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
17 of a child in the first degree, child molestation in the first degree,
18 rape in the second degree, rape of a child in the second degree, or
19 indecent liberties by forcible compulsion; (B) any of the following
20 offenses with a finding of sexual motivation: Murder in the first
21 degree, murder in the second degree, homicide by abuse, kidnapping in
22 the first degree, kidnapping in the second degree, assault in the first
23 degree, assault in the second degree, assault of a child in the first
24 degree, assault of a child in the second degree, or burglary in the
25 first degree; or (C) an attempt to commit any crime listed in this
26 subsection (33)(b)(i); and

27 (ii) Has, before the commission of the offense under (b)(i) of this
28 subsection, been convicted as an offender on at least one occasion,
29 whether in this state or elsewhere, of an offense listed in (b)(i) of
30 this subsection or any federal or out-of-state offense or offense under
31 prior Washington law that is comparable to the offenses listed in
32 (b)(i) of this subsection. A conviction for rape of a child in the
33 first degree constitutes a conviction under (b)(i) of this subsection
34 only when the offender was sixteen years of age or older when the
35 offender committed the offense. A conviction for rape of a child in
36 the second degree constitutes a conviction under (b)(i) of this
37 subsection only when the offender was eighteen years of age or older
38 when the offender committed the offense.

1 (34) "Postrelease supervision" is that portion of an offender's
2 community placement that is not community custody.

3 (35) "Predatory" means: (a) The perpetrator of the crime was a
4 stranger to the victim, as defined in this section; (b) the perpetrator
5 established or promoted a relationship with the victim prior to the
6 offense and the victimization of the victim was a significant reason
7 the perpetrator established or promoted the relationship; or (c) the
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person
9 in authority in any public or private school and the victim was a
10 student of the school under his or her authority or supervision. For
11 purposes of this subsection, "school" does not include home-based
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
13 volunteer, or other person in authority in any recreational activity
14 and the victim was a participant in the activity under his or her
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other
16 person in authority in any church or religious organization, and the
17 victim was a member or participant of the organization under his or her
18 authority.

19 (36) "Private school" means a school regulated under chapter
20 28A.195 or 28A.205 RCW.

21 (37) "Public school" has the same meaning as in RCW 28A.150.010.

22 (38) "Restitution" means a specific sum of money ordered by the
23 sentencing court to be paid by the offender to the court over a
24 specified period of time as payment of damages. The sum may include
25 both public and private costs.

26 (39) "Risk assessment" means the application of an objective
27 instrument supported by research and adopted by the department for the
28 purpose of assessing an offender's risk of reoffense, taking into
29 consideration the nature of the harm done by the offender, place and
30 circumstances of the offender related to risk, the offender's
31 relationship to any victim, and any information provided to the
32 department by victims. The results of a risk assessment shall not be
33 based on unconfirmed or unconfirmable allegations.

34 (40) "Serious traffic offense" means:

35 (a) Nonfelony driving while under the influence of intoxicating
36 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
37 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
2 attended vehicle (RCW 46.52.020(5)); or
3 (b) Any federal, out-of-state, county, or municipal conviction for
4 an offense that under the laws of this state would be classified as a
5 serious traffic offense under (a) of this subsection.
6 (41) "Serious violent offense" is a subcategory of violent offense
7 and means:
8 (a)(i) Murder in the first degree;
9 (ii) Homicide by abuse;
10 (iii) Murder in the second degree;
11 (iv) Manslaughter in the first degree;
12 (v) Assault in the first degree;
13 (vi) Kidnapping in the first degree;
14 (vii) Rape in the first degree;
15 (viii) Assault of a child in the first degree; or
16 (ix) An attempt, criminal solicitation, or criminal conspiracy to
17 commit one of these felonies; or
18 (b) Any federal or out-of-state conviction for an offense that
19 under the laws of this state would be a felony classified as a serious
20 violent offense under (a) of this subsection.
21 (42) "Sex offense" means:
22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
23 RCW 9A.44.130(~~(+11)~~) (12);
24 (ii) A violation of RCW 9A.64.020;
25 (iii) A felony that is a violation of chapter 9.68A RCW other than
26 RCW 9.68A.080; or
27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
28 criminal solicitation, or criminal conspiracy to commit such crimes;
29 (b) Any conviction for a felony offense in effect at any time prior
30 to July 1, 1976, that is comparable to a felony classified as a sex
31 offense in (a) of this subsection;
32 (c) A felony with a finding of sexual motivation under RCW
33 9.94A.835 or 13.40.135; or
34 (d) Any federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony classified as a sex
36 offense under (a) of this subsection.
37 (43) "Sexual motivation" means that one of the purposes for which

1 the defendant committed the crime was for the purpose of his or her
2 sexual gratification.

3 (44) "Standard sentence range" means the sentencing court's
4 discretionary range in imposing a nonappealable sentence.

5 (45) "Statutory maximum sentence" means the maximum length of time
6 for which an offender may be confined as punishment for a crime as
7 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
8 crime, or other statute defining the maximum penalty for a crime.

9 (46) "Stranger" means that the victim did not know the offender
10 twenty-four hours before the offense.

11 (47) "Total confinement" means confinement inside the physical
12 boundaries of a facility or institution operated or utilized under
13 contract by the state or any other unit of government for twenty-four
14 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (48) "Transition training" means written and verbal instructions
16 and assistance provided by the department to the offender during the
17 two weeks prior to the offender's successful completion of the work
18 ethic camp program. The transition training shall include instructions
19 in the offender's requirements and obligations during the offender's
20 period of community custody.

21 (49) "Victim" means any person who has sustained emotional,
22 psychological, physical, or financial injury to person or property as
23 a direct result of the crime charged.

24 (50) "Violent offense" means:

25 (a) Any of the following felonies:

26 (i) Any felony defined under any law as a class A felony or an
27 attempt to commit a class A felony;

28 (ii) Criminal solicitation of or criminal conspiracy to commit a
29 class A felony;

30 (iii) Manslaughter in the first degree;

31 (iv) Manslaughter in the second degree;

32 (v) Indecent liberties if committed by forcible compulsion;

33 (vi) Kidnapping in the second degree;

34 (vii) Arson in the second degree;

35 (viii) Assault in the second degree;

36 (ix) Assault of a child in the second degree;

37 (x) Extortion in the first degree;

38 (xi) Robbery in the second degree;

1 (xii) Drive-by shooting;

2 (xiii) Vehicular assault, when caused by the operation or driving
3 of a vehicle by a person while under the influence of intoxicating
4 liquor or any drug or by the operation or driving of a vehicle in a
5 reckless manner; and

6 (xiv) Vehicular homicide, when proximately caused by the driving of
7 any vehicle by any person while under the influence of intoxicating
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
9 any vehicle in a reckless manner;

10 (b) Any conviction for a felony offense in effect at any time prior
11 to July 1, 1976, that is comparable to a felony classified as a violent
12 offense in (a) of this subsection; and

13 (c) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a violent
15 offense under (a) or (b) of this subsection.

16 (51) "Work crew" means a program of partial confinement consisting
17 of civic improvement tasks for the benefit of the community that
18 complies with RCW 9.94A.725.

19 (52) "Work ethic camp" means an alternative incarceration program
20 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
21 the cost of corrections by requiring offenders to complete a
22 comprehensive array of real-world job and vocational experiences,
23 character-building work ethics training, life management skills
24 development, substance abuse rehabilitation, counseling, literacy
25 training, and basic adult education.

26 (53) "Work release" means a program of partial confinement
27 available to offenders who are employed or engaged as a student in a
28 regular course of study at school.

29 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30, 2008.

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